

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

AMERICAN STEWARDS OF LIBERTY, ET AL.,	§	
	§	
<i>PLAINTIFFS,</i>	§	
	§	
AND	§	
	§	
JOHN YEARWOOD; AND	§	
WILLIAMSON COUNTY, TEXAS,	§	
	§	
<i>INTERVENOR-PLAINTIFFS,</i>	§	
	§	
V.	§	CIVIL ACTION No. 15-cv-1174-LY
	§	
UNITED STATES FISH & WILDLIFE	§	
SERVICE, ET AL.,	§	
	§	
<i>DEFENDANTS.</i>	§	

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OF TEXAS IN
SUPPORT OF INTERVENOR-PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT**

TO THE HONORABLE U.S. DISTRICT JUDGE LEE YEAKEL:

Texas respectfully moves, pursuant to the Court's inherent authority, to file a brief as *amicus curiae* regarding the Supreme Court's recent jurisprudence on the Necessary and Proper Clause, and the impact of the Court's doctrine on the authority of Defendants to regulate the Bone Cave Harvestman ("BCH"). A copy of the proposed brief is attached as Exhibit A to this Motion.

I. Interest of *Amicus Curiae*

Texas appears as *amicus curiae* to preserve the constitutional limits that prevent the federal government from regulating purely intrastate, noneconomic

activity. Texas is impacted by Defendants' interference in a local matter that is "clearly without [the federal government's] powers." Alexander Hamilton, OPINION ON THE CONSTITUTIONALITY OF A NATIONAL BANK (Feb. 23, 1791), *reprinted in* HAMILTON: WRITINGS 621 (Joanne B. Freeman ed., 2001). Texas files this *amicus* brief to contest a clear overreach in the use of federal power, because every citizen suffers harm when the federal government acts outside its constitutional authority.

This short brief seeks to assist the Court by addressing the current jurisprudence on the Necessary and Proper Clause, which supplies an important substantive check on federal power. Here, the Supreme Court's recent holdings prevent the overreach by Defendants, who intend to regulate the BCH despite the fact that the species has no commercial value or presence outside of Texas.

II. Relief Sought

Texas seeks leave of this Court to file an *amicus curiae* brief, attached hereto as Exhibit A, in support of Intervenor-Plaintiffs' Motion for Summary Judgment. A proposed order granting such relief is attached hereto as Exhibit B.

Respectfully submitted this the 13th day of December, 2016,

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CERTIFICATE OF CONFERENCE

On December 9 through December 13, 2016, I conferred via e-mail with counsel of record for Plaintiffs, Intervenor-Plaintiffs, and Defendants regarding whether they consented to the relief requested in this motion. Counsel for Plaintiffs and Intervenor-Plaintiffs represented that they have no opposition to the filing of Texas's *amicus curiae* brief. Through counsel, Defendants indicated that they are opposed the brief.

CERTIFICATE OF SERVICE

I, Michael Toth, hereby certify that on this the 13th day of December, 2016, a true and correct copy of the foregoing document was transmitted via using the CM/ECF system, which automatically sends notice and a copy of the filing to all counsel of record.

/s/ Michael C. Toth

MICHAEL C. TOTH